



**Public Housing Policies Affecting Individuals
with Criminal Records in California:
San Francisco
February, 2001**

I. Introduction

The following memorandum summarizes the housing policies that affect individuals with criminal records in San Francisco, California. The federal housing laws give local housing authorities some discretion to establish local policies regarding the admission and eviction of people with histories of criminal activity. For a summary of the federal housing laws affecting individuals with criminal records, please refer to the Legal Action Center's summary entitled "Housing Laws Affecting Individuals with Criminal Convictions."

II. Statutory Authority

The San Francisco Housing Authority (SFHA) is created by state law, by CAL. HEALTH & SAFETY CODE § 34240.

III. Housing Authority Policy¹

A. Application for Public Housing

At the time of intake, applicants are informed that the SFHA will review the criminal history of each member of an applicant family before determining eligibility. Applicants are warned that criminal behavior will jeopardize admission to public housing and that any criminal activity occurring while an applicant's family is on the SFHA's waiting list will prejudice the SFHA's determination.²

For purposes of screening an applicant's criminal background, the SFHA considers information from national, state, county and city criminal records and any other evidence that may document criminal activity, including information provided by other states, municipalities, court records

¹ The information provided in this memo is based on a reading of the San Francisco Housing Authority's policy. Due to a recent change in personnel, we were unable to talk to a staff member at the SFHA who is familiar with the selection and eviction processes. As a result, there are some specifics we could not clarify.

² San Francisco Housing Authority Admissions and Occupancy Policy ("Policy), Appendix C: SFHA Screening Procedures, at 5.

and former landlords.³ The SFHA considers both felonies and misdemeanors in determining admission eligibility.⁴

The SFHA considers the following applicants ineligible for housing assistance unless they can demonstrate rehabilitation as discussed below:

(1) any individual who has “any previous or current drug-related criminal activity or patterns of alcohol abuse;”⁵

(2) any applicant household that includes a member who is subject to a lifetime registration requirement under California’s sex offender registration program;⁶

(3) any individual who has been convicted of manufacturing or producing methamphetamine (“speed”);⁷

(4) any individual who has been evicted from public housing or a Section 8 unit because of drug-related criminal activity within three years of the application date unless the evicted tenant successfully completes a rehabilitation program approved by the SFHA;⁸

(5) any individual who the SFHA determines is or was, during a reasonable time prior to the date the applicant would otherwise be selected for admission, engaged in any drug-related, violent, or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents of the SFHA;⁹ and (6) any individual whom the SFHA determines illegal use of a controlled substance or abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of SFHA property by residents and employees.¹⁰

When making determinations concerning applicant eligibility, the SFHA has the discretion to

³ Id., at 6.

⁴ Id.

⁵ Policy, at 5. “Drug-related criminal activity” is defined as “the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance” Policy, II(B)2(b)(5) at 6 (as set forth in 42 U.S.C. § 1437d).

⁶ Policy, II(B)2(b)(8) at 7.

⁷ Policy, II(B)2(b)(9) at 7. The bar for this category of individuals is a lifetime ban.

⁸ Policy, II(B)2(b)(1) at 6.

⁹ Policy, II(B)2(b)(2) at 6. The SFHA will consider the police records of the last ten years in determining whether an applicant has a history of criminal activity. Policy, 2(b)(2)(C) at 6.

¹⁰ Policy, II(B)2(b)(4) at 6.

consider the following information to lift bars to eligibility:

- (a) Whether the applicant has successfully completed a supervised drug/alcohol rehabilitation program and is no longer engaging in illegal use of a controlled substance or abuse of alcohol;¹¹
- (b) Whether the applicant has been otherwise rehabilitated successfully and is no longer engaging in illegal use of a controlled substance or abuse of alcohol;¹²
- (c) Whether the applicant is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in illegal use of a controlled substance or abuse of alcohol;¹³

For those applicants who were formerly evicted from public housing because of drug-related criminal activity, the SFHA may consider evidence that the circumstances leading to the eviction no longer exist in determining the individual's eligibility.¹⁴

In addition, the SFHA may gather information from a drug abuse treatment facility solely related to whether the applicant/family member is currently engaging in the illegal use of controlled substances in the following two cases (i) when the individual's criminal record indicates evidence of a prior arrest or conviction and (ii) when the prior tenancy records indicate the applicant engaged in the destruction of property; engaged in violent activity against another person; or interfered with other tenants' peaceful enjoyment of their premises.¹⁵

B. Evictions from Public Housing

Under the terms of the SFHA's Residential Lease Agreement, residents are obligated to refrain from, and to have household members, guests, or any person under the tenant's control refrain from engaging in (1) criminal activity that threatens the health, safety or right to peaceful enjoyment of SFHA's premises by other residents;¹⁶ or (2) drug-related criminal activity on or off the SFHA property.¹⁷

¹¹ Policy, II(C)(1) at 7.

¹² Policy, II(C)(2), at 7.

¹³ Policy, II(C)(3), at 7.

¹⁴ Policy, II(C)(5), at 7.

¹⁵ Policy, II(C)(4), at 7.

¹⁶ A criminal conviction is not needed to demonstrate criminal activity. Policy, Appendix B: One Strike and You're Out Policy ("One Strike"), SFHA Lease - Resident's Obligations, at 2 .

¹⁷ Id.

The SFHA has discretion to consider all circumstances when deciding to terminate a tenant's occupancy including the seriousness of the offense, the extent of participation by family members, and the effects the eviction would have on family members not involved in the prohibited activity. The SFHA may allow a family's continued occupancy on the condition that those engaged in the prohibited activity "will neither reside in nor visit the dwelling unit ..."¹⁸

The SFHA policy denies a grievance hearing to individuals who have been evicted because of criminal activity that threatens the health, safety or right of peaceful enjoyment of the premises of the residents and employees of the SFHA or because of drug-related activity on or off the premises.¹⁹

IV. Opinions of Local Advocates

An attorney specializing in housing matters at Bay Area Legal Aid related that there is a severe shortage of public housing in San Francisco.²⁰ For example, more than 15,000 people are currently on the waiting list for admission to public housing through the SFHA. The SFHA manages less than 6000 public housing and 6000 Section 8 units. Individuals who are denied housing typically receive short-term housing through the shelter system, but many end up homeless or decide to move from the Bay Area to locations where low-income housing is more available.

The SFHA is in the process of amending its admission and occupation guidelines, although the advocate at Bay Area Legal Aid said the process probably will take a considerable amount of time. He thinks the Housing Authority will probably prioritize working families. We do not know how the revisions will affect the current provisions dealing with admission and eviction of people with histories of criminal activity

¹⁸ One Strike, SFHA Lease - Termination of the Lease, (a) at 2.

¹⁹ One Strike, Grievance Procedures, at 2-3.

²⁰ Conversation with Phillip Morgan, Staff Attorney at Bay Area Legal Aid, on February 5, 2001.